



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 24, 1991

Mr. Ross T. Foster
City Attorney
City of Colleyville
Staples, Foster & Hampton
701 Texas Commerce Bank Bldg.
860 Airport Freeway West
Hurst, Texas 76054

OR91-518

Dear Mr. Foster:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13629.

The City of Colleyville received an open records request for "[a]ny special or supplemental audit performed by or at the request of the City of Colleyville during the period January -- September 1991." You inform this office that as a result of an audit conducted on the city's municipal court funds that revealed certain money shortages, an investigation was conducted to determine whether criminal prosecution should be pursued against five individuals. You state that you have released to the requestor portions of the requested audit; you seek to withhold, however, other portions of the audit as well as the entire investigative report pursuant to sections 3(a)(1), 3(a)(3), and 3(a)(11) of the Open Records Act.

Because of the possibility of criminal wrongdoing, you state that you have asked the Economic Crimes Section of the Tarrant County District Attorney's Office to review the audit and investigative report with an eye towards possible criminal charges. The assistant district attorney who is reviewing those documents has informed this office that all previously withheld information should continue to be closed to the public, at least until he has had the opportunity to thoroughly eval-

uate the information, "as it would relate to criminal litigation if warranted by the evidence." (Emphasis in original.) This office agrees that the entire investigative report as well as the information deleted from the first page of the audit may be withheld at this time pursuant to section 3(a)(3) because of reasonably anticipated criminal litigation.¹

Section 3(a)(11) of the act excepts advice, opinion, or recommendation intended for use in the deliberative process. Open Records Decision No. 538 (1990). In Open Records Decision No. 429 (1985) at 5, this office indicated that information protected by section 3(a)(11) must be prepared by a person or entity with an official reason or duty to provide the information in question. *See also* Open Records Decision No. 283 (1981). This helps assure that the information plays a role in the deliberative process. Open Records Decision No. 464 (1987) at 3. In this regard, section 3(a)(11) protects the solicited opinions and recommendations of the auditors found in the audit. *See, e.g.,* Open Records Decision No. 335 (1982).

This office agrees that the city properly withheld the information at issue. Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-518.

Yours very truly,



William Walker
Assistant Attorney General
Opinion Committee

WW/RWP/lcd

Ref.: ID# 13629
ID# 13787
ID# 13885

¹You also assert that civil litigation regarding this matter is reasonably anticipated. Because the information at issue clearly relates to possible criminal litigation, we need not address at this time any other grounds for withholding this information pursuant to section 3(a)(3).

Enclosures: Submitted documents

cc: Melissa Williams
Reporter
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(w/o enclosures)